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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKY WENDELL PHILLIPS,

Defendant and Appellant.

D044758

(Super. Ct. No. SCE238577)

APPEAL from a judgment of the Superior Court of San Diego County, Herbert J. Exarhos, Judge. Affirmed.

Ricky Wendell Phillips entered a negotiated guilty plea to forcible oral copulation (Pen. Code, § 288a, subd. (c)(2)),¹ kidnapping (§ 207), and residential burglary (§§ 459/460). He admitted serving three prior prison terms (§§ 667.5, subd. (b), 668).

The court sentenced him to a stipulated 25 years in prison: the eight-year upper term for forcible oral copulation, with a consecutive eight-year upper term for kidnapping and a consecutive six-year upper term for residential burglary, enhanced by three one-year terms for the prior prison terms.² The court denied a certificate of probable cause. (Cal. Rules of Court, rule 30(b).)

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as a possible but not arguable issue whether Phillips's trial counsel provided effective assistance. He does not state specifics. We granted Phillips permission to file a brief on his own behalf. He has not responded. However, in his request for a certificate of probable cause Phillips claimed he was denied effective assistance of counsel through his trial counsel's failure to:

1) interview him before trial; 2) communicate with him or respond to his telephone calls; 3) prepare for the preliminary hearing; 4) investigate the facts of the case; 5) gather exculpatory evidence; 6) explain the terms and conditions of the plea bargain;

¹ All statutory references are to the Penal Code.

² Because Phillips entered a guilty plea, he cannot challenge the facts underlying the conviction. (§ 1237.5; *People v. Martin* (1973) 9 Cal.3d 687, 693.) We need not recite the facts.

7) affirmatively negotiate the plea with the district attorney rather than passively accept the district attorney's proposal; 8) explain to Phillips the rights Phillips was waiving; and 9) explain to Phillips his right to appeal. Phillips also contends trial counsel coerced him into signing the plea bargain and did not consider Phillips's advanced age when agreeing to a life term.

The record sheds no light on why Phillips's trial counsel acted or failed to act as he did. "If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. [Citation.] Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus." (*People v. Carter* (2003) 30 Cal.4th 1166, 1211, citing *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) If Phillips wishes to pursue his claim that he was denied effective assistance of counsel, he should seek relief through a petition for a writ of habeas corpus filed in the trial court.

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Phillips on this appeal.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.